

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LUJUAN McCANTS,

Petitioner,

Case No. 2:20-cv-13166
Hon. Denise Page Hood

v.

WILLIS CHAPMAN,

Respondent.

_____/

ORDER GRANTING MOTION TO QUASH SUBPOENA [ECF No. 7]

This is a habeas action brought by a state prisoner under 28 U.S.C. § 2254. Respondent has not yet filed the state court record or a responsive pleading, which are due on May 24, 2021. Petitioner has sent a subpoena to the state trial judge, requesting copies of documents related to his underlying state conviction. Before the Court is Respondent's motion to quash the subpoena. (ECF No. 7).

"A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Rather, a habeas petitioner hoping to benefit from the discovery procedures set forth in the Federal Rules of Civil Procedure must first demonstrate good cause. Rule 6(a) of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254. Petitioner has not moved for an order compelling discovery. He has not shown good cause for the requested materials, and he is not entitled to compel the state trial judge to provide records to him on his own authority.

Under the federal rules governing habeas corpus proceedings, Respondent is required to

submit all transcripts and other documents relevant to the determination of the habeas petition at the time the answer is filed. Rule 5 of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254. Further, pursuant to Habeas Corpus Rule 7, the Court “may direct the parties to expand the record by submitting additional materials relating to the petition.” Rule 7 of Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254. *After* Respondent files its responsive pleading and the Rule 5 materials, if Petitioner believes the record presented to the Court is insufficient to adjudicate his claims, he may at that time file a motion to compel Respondent to file any additional Rule 5 material or for discovery.

For these reasons, the Court **GRANTS** Respondent’s Motion to Quash Subpoena Served on Macomb County Circuit Judge.

SO ORDERED.

s/Denise Page Hood
United States District Judge

Dated: May 12, 2021